

5-22-02  
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**HYDRAULIC PROJECT APPROVAL**  
RCW 77.55.100 - appeal pursuant to Chapter 34.05 RCW

State of Washington  
Department of Fish and Wildlife  
Region 4 Office  
16018 Mill Creek Boulevard  
Mill Creek, Washington 98012

DATE OF ISSUE: May 22, 2002

LOG NUMBER: 00-F1913-02

<u>PERMITTEE</u>	<u>AUTHORIZED AGENT OR CONTRACTOR</u>
Ash Grove Cement Company 3801 East Marginal Way South Seattle, Washington 98134-1147 (206) 623-5596 Fax: (206) 623-5355	Spearman Engineering ATTENTION: Jay W. Spearman P.S. P.O. Box 230 Bremerton, Washington 98337 (877) 777-1630 Fax: (360) 377-1636

**PROJECT DESCRIPTION:** Dredge Approximately 300 CY of Spilled Gravel Aggregate and Limestone

**PROJECT LOCATION:** 3810 East Marginal Way, Seattle

#	<u>WRIA</u>	<u>WATER BODY</u>	<u>TRIBUTARY TO</u>	<u>1/4 SEC.</u>	<u>SEC.</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>COUNTY</u>
01	09.MAR1	Duwamish Waterway	Puget Sound		18	24 North	04 East	King

NOTE: The recent listing of chinook salmon and bull trout as threatened species under the Endangered Species Act (ESA) may affect future construction projects in or near marine waters of Puget Sound and freshwater streams. Future work may require consultation with the National Marine Fisheries Service and the United States Fish and Wildlife Service.

NOTE: The log numbers of prior HPAs associated with this project site are B1-14115-01 through B1-14115-05.

NOTE: Because of dredging impacts on fish life and concerns regarding contaminant disturbance (the project site is within the vicinity of a superfund cleanup area), WDFW will require that the proponent demonstrate that measures have been implemented to reduce gravel and limestone spillage at the project site prior to future issuance of an HPA. To reduce the frequency of dredging at the project site, the proponent will need to implement measures that will minimize spillage to the greatest extent possible. Spillage can be reduced, in part, by having a covered conveyor, taking precautions during loading of the conveyor hopper, installing spill trays, using sideboards on the barge during offloading, and creating a maintenance and operations plan that outlines procedures for collecting gravel aggregate and limestone that accumulates on the conveyor (WDFW photo-documentation on file).

PROVISIONS

1. **TIMING LIMITATIONS:** The project may begin **October 15, 2002** and shall be completed by **January 31, 2003**, provided:
  - a. Work below the ordinary high water line shall not occur from **February 1** through **October 14** of any year for the protection of migrating juvenile salmonids.
2. **NOTIFICATION REQUIREMENT:** The permittee or contractor shall notify WDFW Enforcement Officer Mike Frame at (425) 775-1311 at least three working days prior to the start of construction activities. Notification shall include the permittee's name, project location, starting date for work, and the control number for this Hydraulic Project Approval.





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3. Work shall be accomplished per plans and specifications entitled, Proposed Removal of 300 Cu Yds of Spilled Limestone at Conveyor Tower to Reestablish Water Depth at Berth, (no date), and submitted to the Washington Department of Fish and Wildlife, except as modified by this Hydraulic Project Approval. These plans reflect design criteria per Chapter 220-110 WAC. These plans reflect mitigation procedures to significantly reduce or eliminate impacts to fish resources. A copy of these plans shall be available on site during construction.
4. Best Management Practices (BMPs) shall be implemented at the project site during barge offloading. Prior to future issuance of an HPA, the proponent must provide WDFW with information describing how the existing offloading procedures have been revised to reduce spillage.
5. As specified in the application, *approximately 300 cubic yards* of aggregate shall be dredged to a depth no greater than -25 ft. MLLW.
6. *Upon project completion, the proponent must provide WDFW with a post-construction bathymetry map of the dredged area. The survey must include areas A-D at Stations 0-100 as illustrated on the map submitted with the application materials on December 14, 2001. The survey must be conducted no later than one month following construction and submitted to WDFW no later than two weeks upon survey completion.*
7. A clamshell dredge shall be used for dredging. Each pass of the clamshell dredge bucket shall be complete.
8. Dredged material shall not be stockpiled below the ordinary high water line.
9. As outlined in the application, the dredged material may be recycled and used to make cement. Any excess dredged materials shall be disposed upland such that they do not re-enter surface waters of the state.
10. Eelgrass and kelp shall not be adversely impacted due to any project activities (e.g., barge shall not ground, equipment shall not operate, and other project activities shall not occur in eelgrass and kelp).
11. Intertidal wetland vascular plants shall not be adversely impacted due to project activities (e.g., barge shall not ground, equipment shall not operate, and other activities shall not occur in intertidal wetland vascular plants). If such vegetation is adversely impacted, it shall be replaced using proven methodology.
12. Project activities shall be conducted to minimize siltation of the beach area and bed.
13. If a fish kill occurs or fish are observed in distress, the project activity shall immediately cease and WDFW Habitat Program shall be notified immediately.
14. All debris or deleterious dredged material shall be removed and disposed of at an approved upland disposal site.
15. No petroleum products or other deleterious materials shall enter surface waters.
16. Project activities shall not degrade water quality to the detriment of fish life.

SEPA: Exempt, City of Seattle dated April 23, 2002.



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**APPLICATION ACCEPTED:** May 22, 2002

**ENFORCEMENT OFFICER:** Frame 124 [P3]

Pamela Erstad (425) 379-2306  
Area Habitat Biologist

*Pamela Erstad*

for Director  
WDFW

cc: Deborah Cornett, WDFW  
Tony Oppermann, WDFW  
Margaret Glowacki, DCLU, City of Seattle  
Alice Kelly, NWDOE  
Jim Green, COE

**GENERAL PROVISIONS**

This Hydraulic Project Approval (HPA) pertains only to the provisions of the Fisheries Code (RCW 77.55 - formerly RCW 75.20). Additional authorization from other public agencies may be necessary for this project.

This HPA shall be available on the job site at all times and all its provisions followed by the permittee and operator(s) performing the work.

This HPA does not authorize trespass.

The person(s) to whom this HPA is issued may be held liable for any loss or damage to fish life or fish habitat which results from failure to comply with the provisions of this HPA.

Failure to comply with the provisions of this Hydraulic Project Approval could result in a civil penalty of up to one hundred dollars per day or a gross misdemeanor charge, possibly punishable by fine and/or imprisonment.

All HPAs issued pursuant to RCW 77.55.100 or 77.55.200 are subject to additional restrictions, conditions or revocation if the Department of Fish and Wildlife determines that new biological or physical information indicates the need for such action. The permittee has the right pursuant to Chapter 34.04 RCW to appeal such decisions. All HPAs issued pursuant to RCW 77.55.110 may be modified by the Department of Fish and Wildlife due to changed conditions after consultation with the permittee: PROVIDED HOWEVER, that such modifications shall be subject to appeal to the Hydraulic Appeals Board established in RCW 77.55.170.

**APPEALS - GENERAL INFORMATION**

IF YOU WISH TO APPEAL A DENIAL OF OR CONDITIONS PROVIDED IN A HYDRAULIC PROJECT APPROVAL, THERE ARE INFORMAL AND FORMAL APPEAL PROCESSES AVAILABLE.

- A. INFORMAL APPEALS (WAC 220-110-340) OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.100, 77.55.110, 77.55.140, 77.55.190, 77.55.200, and 77.55.290:



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A person who is aggrieved or adversely affected by the following Department actions may request an informal review of:

- (A) The denial or issuance of a HPA, or the conditions or provisions made part of a HPA; or
- (B) An order imposing civil penalties.

It is recommended that an aggrieved party contact the Area Habitat Biologist and discuss the concerns. Most problems are resolved at this level, but if not, you may elevate your concerns to his/her supervisor. A request for an INFORMAL REVIEW shall be in WRITING to the Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091 and shall be RECEIVED by the Department within 30-days of the denial or issuance of a HPA or receipt of an order imposing civil penalties. The 30-day time requirement may be stayed by the Department if negotiations are occurring between the aggrieved party and the Area Habitat Biologist and/or his/her supervisor. The Habitat Protection Services Division Manager or his/her designee shall conduct a review and recommend a decision to the Director or its designee. If you are not satisfied with the results of this informal appeal, a formal appeal may be filed.

**B. FORMAL APPEALS (WAC 220-110-350) OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.100 OR 77.55.140:**

A person who is aggrieved or adversely affected by the following Department actions may request an formal review of:

- (A) The denial or issuance of a HPA, or the conditions or provisions made part of a HPA;
- (B) An order imposing civil penalties; or
- (C) Any other "agency action" for which an adjudicative proceeding is required under the Administrative Procedure Act, Chapter 34.05 RCW.

A request for a FORMAL APPEAL shall be in WRITING to the Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091, shall be plainly labeled as "REQUEST FOR FORMAL APPEAL" and shall be RECEIVED DURING OFFICE HOURS by the Department within 30-days of the Department action that is being challenged. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal shall be within 30-days of the date of the Department's written decision in response to the informal appeal.

**C. FORMAL APPEALS OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.110, 77.55.200, 77.55.230, or 77.55.290:**

A person who is aggrieved or adversely affected by the denial or issuance of a HPA, or the conditions or provisions made part of a HPA may request a formal appeal. The request for FORMAL APPEAL shall be in WRITING to the Hydraulic Appeals Board per WAC 259-04 at Environmental Hearings Office, 4224 Sixth Avenue SE, Building Two - Rowe Six, Lacey, Washington 98504; telephone 360/459-6327.

**D. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS RESULTS IN FORFEITURE OF ALL APPEAL RIGHTS. IF THERE IS NO TIMELY REQUEST FOR AN APPEAL, THE DEPARTMENT ACTION SHALL BE FINAL AND UNAPPEALABLE.**